
TITLE 326 AIR POLLUTION CONTROL DIVISION

**FINDINGS AND DETERMINATION OF THE COMMISSIONER
PURSUANT TO [IC 13-14-9-7](#) AND SECOND NOTICE OF COMMENT PERIOD**
LSA Document #14-441

SHIPBUILDING AND SHIP REPAIR ANTIFOULANT COATINGS**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to [326 IAC 8-12](#) concerning antifoulant coatings used at shipbuilding and ship repair facilities. The purpose of this notice is to seek public comment on the draft rule, including suggestions for specific language to be included in the rule. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

CITATIONS AFFECTED: [326 IAC 8-12-4](#).

AUTHORITY: [IC 13-14-18](#); [IC 13-17-3](#).

STATUTORY REQUIREMENTS

[IC 13-14-9-7](#) recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that the rulemaking policy alternatives available to IDEM are so limited that the first notice of public comment period would provide no substantial benefit to the environment or persons to be regulated or otherwise affected by the proposed rule, IDEM may forgo this comment period and proceed directly to the notice of second public comment period.

If the commissioner makes the determination of limited rulemaking policy alternatives required by [IC 13-14-9-7](#), the commissioner shall prepare written findings and include them in the second notice of public comment period published in the Indiana Register. This document constitutes the commissioner's written findings pursuant to [IC 13-14-9-7](#).

The statute provides for this shortened rulemaking process if the commissioner determines that "the rulemaking policy alternatives available to the department are so limited that the public notice and comment period under [\[IC 13-14-9-3\]](#) . . . would provide no substantial benefit to:

- (1) the environment; or
- (2) persons to be regulated or otherwise affected by the proposed rule."

BACKGROUND

IDEM regulates volatile organic compound (VOC) emissions from surface coating operations at shipbuilding and ship repair facilities at [326 IAC 8-12](#). The shipbuilding and ship repair rule was adopted in 1995 to comply with Section 182(b)(1) of the Clean Air Act that required ozone nonattainment areas classified as moderate or above to develop plans to reduce the areas' VOC emissions by at least 15% by November 15, 1996. Reduction plans were prepared for Clark, Floyd, Lake, and Porter counties. These plans relied on a variety of mobile, stationary, and area source controls, including control of VOC from shipbuilding and ship repair surface coating operations. The United States Environmental Protection Agency (U.S. EPA) was working on the Control Technique Guideline (CTG) for this source category but had not issued the CTG by the time IDEM needed to proceed with rulemaking to meet Clean Air Act deadlines. U.S. EPA had also proposed a National Emission Standard for Hazardous Air Pollutants (NESHAP) for shipbuilding and ship repair. IDEM developed [326 IAC 8-12](#) to be consistent with the proposed NESHAP as much as possible. Jeffboat LLC, located in Jeffersonville (Clark County) is the primary source regulated by [326 IAC 8-12](#).

Jeffboat LLC recently made a request to IDEM to amend the VOC content limit for antifoulant coatings. Section 4(a)(1)(E) of [326 IAC 8-12](#) indicates that specialty coatings not specifically listed shall not exceed a VOC content of 2.83 pounds per gallon. Antifoulant coatings are not specifically listed and are subject to the 2.83 pounds per gallon limit. The antifoulant coating that Jeffboat LLC was using with a VOC content limit of 2.83 pounds per gallon was discontinued by the supplier and is no longer available. There are two antifoulant coatings remaining on the market that meet the more stringent Indiana requirements in [326 IAC 8-12-4\(a\)\(1\)\(E\)](#). The first is specifically designed for yachts and does not have the same ablative properties that are required in barge manufacturing. The second costs three times more than the other available antifoulant coatings, putting Jeffboat LLC, and potentially any other source subject to [326 IAC 8-12](#), at a severe economic disadvantage to facilities in other states that can purchase the cheaper antifoulant coatings that meet the VOC content limit in the NESHAP.

IDEM is proposing an antifoulant VOC content limit of 3.33 pounds per gallon. This is consistent with the limit in the final NESHAP for Shipbuilding and Ship Repair, 40 CFR 63, Subpart II, Table 2 and the CTG (August 27, 1996, Federal Register, 61 FR 44053) that U.S. EPA issued for the control of VOC emissions to assist states in

analyzing and determining reasonable available control technology (RACT) for shipbuilding and ship repair operations located in ozone nonattainment areas. IDEM is not aware of any other state RACT rules with more stringent VOC limits than the 3.33 pounds per gallon VOC content limit for antifoulant coatings.

The current limit in [326 IAC 8-12-4](#) is part of the Indiana state implementation plan (SIP) and IDEM will submit this rulemaking to U.S. EPA for SIP approval once it is effective. IDEM will provide a Section 110(l) Clean Air Act demonstration for antibacksliding for SIP approval and will rely on reductions in the state architectural and industrial maintenance (AIM) rule at [326 IAC 8-14](#) for the antibacksliding demonstration.

IDEM is using a Section 7 notice for this rulemaking because the options for the amendment are limited and it is the only amendment IDEM is proposing for this rulemaking. The proposed limit is consistent with federal law.

[IC 13-14-9-4](#) Identification of Restrictions and Requirements Not Imposed under Federal Law

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law.

Potential Fiscal Impact

This rulemaking will save the affected source money since the source will not have to switch to a higher cost coating and will not lose customers to competitors that can respond to a customer's request to use a specific manufacturer coating system to coat the barge. If Jeffboat LLC cannot offer the same options as other manufacturers in other states, they may have to decline business or send the barge to an outside independent shipyard in another state, which could substantially increase cost to Jeffboat LLC or negatively impact their ability to give timely service to customers. Coating suppliers are normally awarded the whole vessel for their paint system, and therefore, do not go to the expense to test antifoulants with other supplier's epoxy, and do not warranty their coating system with other supplier's antifoulants.

Public Participation and Work Group Information

No work group is planned for the rulemaking. If you feel that a work group or other informal discussion on the rule is appropriate, please contact Susan Bem, Rules Development Branch, Office of Legal Counsel at (317) 233-5697 or (800) 451-6027 (in Indiana).

Small Business Assistance Information

IDEM established a compliance and technical assistance program (CTAP) under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at:

www.in.gov/idem/ctap

For purposes of [IC 4-22-2-28.1](#), small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Jessica Faust-Hamblin
IDEM Small Business Regulatory Coordinator
IGCN 1225
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 232-8172 or (800) 988-7901
ctap@idem.in.gov

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 4-4-35-8](#) is:

Erik Scheub
Office of Small Business and Entrepreneurship
One North Capitol, Suite 600
Indianapolis, IN 46204
(317) 232-5679
ombudsman@osbe.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 4-4-35-8](#), specifically [IC 4-4-35-8\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Steven N. Howell
IDEM Small Business Assistance Program Ombudsman
IGCN 1301
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 232-8587 or (800) 451-6027
snhowell@idem.in.gov

FINDINGS

The commissioner of IDEM has prepared written findings regarding rulemaking on a revised VOC content limit for antifoulant coatings at [326 IAC 8-12-4](#). These findings are prepared under [IC 13-14-9-7](#) and are as follows:

- (1) The options for a revised VOC limit for antifoulant coatings are very limited. If the revised limit is not consistent with RACT, U.S. EPA will not approve the new limit.
- (2) I have determined that under the specific circumstances pertaining to this rule, the rulemaking policy alternatives are so limited that the public notice and comment period provided in the notice of first public comment period would provide no substantial benefit to the environment or to persons to be regulated or otherwise affected by the rule.
- (3) The draft rule is hereby incorporated into these findings.

Thomas W. Easterly
Commissioner
Indiana Department of Environmental Management

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:
LSA Document #14-441 Shipbuilding Antifoulant Coatings
Susan Bem
Rules Development Branch
Office of Legal Counsel
Indiana Department of Environmental Management
Indiana Government Center North
100 North Senate Avenue
Indianapolis, IN 46204-2251
- (2) By facsimile to (317) 233-5970. Please confirm the timely receipt of your faxed comments by calling the Rules Development Branch at (317) 232-8922.
- (3) By electronic mail to sbem@idem.in.gov. To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.**
- (4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

COMMENT PERIOD DEADLINE

All comments must be postmarked, faxed, or time stamped not later than December 1, 2014. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from Susan Bem, Rules Development Branch, Office of Legal Counsel (317) 233-5697 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. [326 IAC 8-12-4](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 8-12-4](#) Volatile organic compound emissions limiting requirements

Authority: [IC 13-14-8](#); [IC 13-17-3-4](#)

Affected: [IC 13-12](#)

Sec. 4. (a) On and after May 1, 1996, the owner or operator of a shipbuilding or ship repair facility subject to this rule shall comply with the following VOC emissions limiting requirements:

- (1) Provisions applicable to specialty coatings are as follows:
 - (A) Special marking coatings shall not exceed a VOC content of four and eight-hundredths (4.08) pounds per gallon.
 - (B) Heat resistant and high-gloss coatings shall not exceed a VOC content of three and fifty-hundredths

(3.50) pounds per gallon.

(C) High-temperature coatings shall not exceed a VOC content of four and seventeen-hundredths (4.17) pounds per gallon.

(D) Antifoulant coatings shall not exceed a VOC content of three and thirty-three hundredths (3.33) pounds per gallon.

~~(D)~~ **(E)** Weld-through (shop) preconstruction primers shall comply with subdivisions (3) through (5).

~~(E)~~ **(F)** Any other specialty coating shall not exceed a VOC content of two and eighty-three hundredths (2.83) pounds per gallon.

(2) During application of any general use coating, VOC emissions shall be limited as follows:

(A) The VOC content of any general use coating shall not exceed two and eighty-three hundredths (2.83) pounds per gallon, as applied.

(B) From May 1 through September 30, no thinner shall be added to any general use coating.

(3) During application of any weld-through (shop) preconstruction primer, VOC emissions shall be limited throughout the year as follows:

(A) Waterbased weld-through (shop) preconstruction primer shall be used.

(B) The VOC content of weld-through (shop) preconstruction primer, as applied, shall not exceed zero (0).

(C) No cleaning material shall be used in the primer application facility.

(D) No thinner shall be added to the weld-through (shop) preconstruction primer.

(4) If the owner or operator of a shipbuilding or ship repair facility determines that a waterbased weld-through (shop) preconstruction primer can no longer be used due to an operational, performance, or availability constraint associated with the waterbased weld-through (shop) preconstruction primer, the source shall do the following:

(A) Notify the department within seven (7) days of discontinuing use of the waterbased weld-through (shop) preconstruction primer.

(B) Submit to the department for approval a plan for an alternative control within sixty (60) days of discontinuance. The alternative control shall consist of one (1) of the following:

(i) A waterbased weld-through (shop) preconstruction primer.

(ii) A control system with a minimum overall VOC emissions reduction efficiency of ninety-five percent (95%) that is subject to each of the following requirements:

(AA) The operation, maintenance, and testing requirements of [326 IAC 8-7-9](#).

(BB) The monitoring, record keeping, and reporting requirements of [326 IAC 8-7-10](#).

(C) Install the alternative control within nine (9) months of approval by the department of the plan required in clause (B).

(5) During the time between the date when the owner or operator of the shipbuilding or ship repair facility discontinues the use of the waterbased preconstruction primer and the date when the alternative control is installed, the weld-through (shop) preconstruction primer used by the owner or operator of such shipbuilding or ship repair facility shall not exceed a VOC content of five and sixty-five hundredths (5.65) pounds per gallon or the VOC content for weld-through (shop) preconstruction primer prescribed by the ~~U.S. EPA in a final regulation establishing~~ National Emissions **Emission** Standards for Shipbuilding and Ship Repair (Surface Coating), **40 CFR 63, Subpart II**, whichever is lower.

(b) On and after May 1, 1996, a source subject to this rule shall comply with the following work practice standards:

(1) Cleaning accessories, such as, but not limited to, paper, cloth, and rags that have been used for cleaning surfaces and equipment and that contain cleaning materials shall be stored in normally closed gasket sealed containers.

(2) VOC-containing solvents and coatings shall be stored in normally closed sealed containers prior to use. Spent VOC-containing solvents and coatings shall be stored in normally closed gasket sealed containers.

(3) Cleaning materials for cleaning spray equipment, including paint lines, shall not be used unless the equipment for collecting the cleaning materials and minimizing its evaporation to the atmosphere is used.

(4) All handling and transfer of VOC-containing materials to and from containers, tanks, vats, drums, and piping systems shall be conducted in a manner that minimizes drips and spills, and any drips and spills shall be cleaned up promptly.

(5) All containers, tanks, vats, drums, and piping systems shall be free of cracks, holes, and other defects and must be closed unless materials are being added to or removed from them.

(c) The owner or operator of sources subject to this rule shall comply with the following training requirements:

(1) On or before January 1, 1996, the owner or operator shall develop a written worker training program. The training program shall be included in the compliance plan required to be submitted to the department for review by section 7(b)(1) of this rule.

(2) On or before May 1, 1996, all workers, including contractors, shall have completed a training program if they engage in any of the activities listed in subdivision (3).

(3) The training program may include training provided by the manufacturer or supplier of coatings, cleaning materials, or the application equipment thereof, and shall include written procedures, hands-on demonstration, as appropriate, and certification by the trainer of the trainee's ability to perform the task, on the following activities:

(A) Identification of appropriate coatings or cleaning materials.

(B) Preparation of coatings or cleaning materials according to coating or cleaning material manufacturer, distributor, or owner or operator's recommendations.

(C) Application of coatings or cleaning materials, or organic solvents using techniques that minimize their usage.

(D) Procedures to clean spray guns to minimize evaporation of organic solvents to the atmosphere.

(E) Work practice standards established in subsection (b).

(F) Procedures to gather, record, monitor, and report data in accordance with section 7 of this rule.

(4) Beginning in 1997, the owner or operator shall provide annual refresher training prior to May 1 to any worker performing one (1) or more of the activities listed in subdivision (3). Such training shall be appropriate to the job responsibilities of the worker.

(5) Any worker may perform one (1) or more activities listed in subdivision (3), for not more than one hundred eighty (180) days, notwithstanding the requirement of subdivision (2), provided:

(A) such untrained worker works under the supervision of a worker who meets the training requirements of subdivision (2); and

(B) the owner or operator keeps records of:

(i) the date the worker was assigned to the activity;

(ii) the date training was completed; and

(iii) the name of the worker providing the supervision.

(6) The owner or operator shall keep records of the training program. The records shall consist of the following:

(A) The date training was completed.

(B) A list of workers by name and worker activities listed in subdivision (3) in which each worker has been trained.

(C) A statement signed by the person providing the training certifying that the worker completed training and is proficient in the activities listed in subdivision (3) in which the worker will be engaged.

(Air Pollution Control Division; [326 IAC 8-12-4](#); filed Apr 1, 1996, 10:00 a.m.: 19 IR 1753; filed Jun 15, 2001, 12:08 p.m.: 24 IR 3613)

[Notice of Public Hearing](#)

Posted: 10/29/2014 by Legislative Services Agency

An [html](#) version of this document.